



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/575,890

08/16/2006

Walter Demuth

1006/0113PUS1

5525

60601 7590 05/21/2010  
Muncy, Geissler, Olds & Lowe, PLLC  
4000 Legato Road  
Suite 310  
FAIRFAX, VA 22033

EXAMINER

ROSATI, BRANDON MICHAEL

ART UNIT

PAPER NUMBER

3744

MAIL DATE

DELIVERY MODE

05/21/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/575,890</p>	<p><b>Applicant(s)</b> DEMUTH ET AL.</p>	
	<p><b>Examiner</b> BRANDON M. ROSATI</p>	<p><b>Art Unit</b> 3744</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Cheryl J. Tyler/  
Supervisory Patent Examiner, Art Unit 3744

/Brandon M Rosati/  
Examiner, Art Unit 3744

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicant's arguments (pages 3 and 4) that no motivation has been provided to modify Demuth and thus a prima facie case of obviousness has not been established for claims 14 and 30, the Examiner disagrees. Claims 14 and 30, has been rejected with claims 1-17, 10, 12, 13, 15-17, 24-26, 29, 31, and 32, all of which are rejected under 103 with Demuth et al. in view of Carpentier. The Examiner has given the motivation to combine the references in the rejections of claims 1 and 29. Since, the same combination of references has been used for the rejection of claims 14 and 30, the Examiner has merely pointed out where in the reference the additional structure claimed can be found. No additional reference was added and thus a new reason to combine is not needed. Therefore, applicant's arguments are not persuasive and the rejection is maintained. In response to applicant's arguments (pages 5 and 6) that the housing does not extend between the first and second end plates, the Examiner disagrees. The combined teachings of Demuth et al. and Carpentier disclose all the structural features of the claim including the housing (see Carpentier). Since Carpentier teaches a general teaching of a heat exchanger with a housing, the Examiner noted in the action that it would be obvious to one of ordinary skill to vary the shape of the housing, as well as provide reasons why one of ordinary skill would do this. Thus establishing a prima facie case of obviousness as to why one would modify the general teachings of a housing to have it extend between the first and second end piece. Further, applicant has not established any criticality for the housing, thus one of ordinary skill is capable of utilizing any shape housing, which would ensure the device is capable of utilizing two fluids (i.e. liquids). Therefore, applicant's arguments are not persuasive and the rejection is maintained. Finally, applicant requests on page 5, that the Examiner explain how the proposed combination would "minimize cost." In response, it is obvious and well known to one of ordinary skill that there is a trade off between the amount of material used and the cost that the material entails. Thus, one having ordinary skill in the art would know that so long as the heat exchanger functioned when having the housing extend only between the first end piece and the second end piece, instead of extending over those pieces, the amount of material would be reduced, which would thus reduce the overall cost, while still ensuring that the device was capable of handling two fluids (i.e. liquids).